IN THE HIGH COURT OF PUNJAB AND HARYANA AT CHANDIGARH

C.W.P.No.2324 of 2006

Date of decision: 27.11.2006

Nahar Spinning Mills Limited

...Appellant

Versus

The State of Punjab and others

...Respondents

CORAM: HON'BLE MR.JUSTICE ADARSH KUMAR GOEL
HON'BLE MR.JUSTICE RAJESH BINDAL

Present: Mr.K.L.Goyal, Advocate for the petitioner

Ms.Urvashi Dhugga, Assistant Advocate General, Punjab for respondents.

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JUDGMENT

This petition challenges order dated 14.9.2005(Annexure P-8) passed by respondent no.2 imposing penalty under Section 51(7)(b) of Punjab VAT Act, 2005 (for short 'the Act').

Facts noticed in the impugned order are that on 2.9.2005, Vehicle No.CH-01K-7670 loaded with electrical goods consigned from Chandigarh arrived at the I.C.C.(Information Collection Centre), Zirakpur. The said centre has been set up under the provisions of the Act with a view to check evasion of VAT.

The driver of the vehicle made a report at the check post where form VAT-XXXVI was generated in the light of bill produced by the driver issued by M/S Luxmi Electric Co., Chandigarh in the name of the petitioner, which is located in the State of Punjab. Apart from bill, the driver also produced a goods receipt issued by the Transport Company.

The Taxation Inspector found that the petitioner had paid 1%

Central Sales Tax, which was applicable in the case of an inter-state sale from Chandigarh. Case of the petitioner is that it being a registered dealer could avail the said concessional rate of tax on purchase of materials in the course of inter-state transactions. The Checking Officer, not being satisfied, detained the goods and submitted a report to the Designated Officer. The Designated Officer rejected the submission made on behalf of the petitioner and observed that the petitioner, being engaged in manufacturing and spinning weaving, knitting of all types of yarn textile and other hosiery goods could not have purchased florescent tube rods for manufacturing. It was observed that contention of behalf of the petitioner that goods were purchased against 'C' form could not be accepted. It was further observed that goods were being transported in an attempt to evade the tax payable to the State of Punjab. Copy of order dated 14.9.2005 imposing penalty of Rs.93,564/- passed by respondent No.2 has been filed as Annexure P.8.

Case of the petitioner is that goods having been voluntary reported at the check post and the same being accompanied by all relevant documents, there being no mis-declaration or mis-description about the goods and value of the goods, inference of evasion of tax could not at all be drawn. It further pointed out that electrical goods were specifically mentioned in the registration certificate itself and declaration had duly been furnished in 'C' form and florescent tube rods were required to be used for illumination of the building within factory premises, which was intimately connected with the manufacturing process and as such there is no question of any evasion of tax. If there was any violation of Section 10-A of the Central Sales Tax Act, 1956 (for short, 'the Central Act') and if petitioner misused goods purchased against 'C' form, specific remedy was provided for such a default.

Learned counsel for the petitioner has relied upon **State of Madras Vs. Radio and Electricals Ltd. and another (1966) 18 Sales Tax Cases 222(SC), Utkal Galvanisers Limited Vs. Commissioner of Commercial Taxes, Orrissa and others (1997) 104 Sales Tax Cases 222 (Orissa) and J.K.Cotton Spinning & Weaving Mills Co. Ltd. Vs. The Sales Tax officer, Kanpur and others (1965) 16 Sales Tax Cases, 563 (SC) and** judgment of this Court in **M/s. Partap Steel Rolling Mills**

Limited v. State of Punjab, GSTR No.9 of 1993, decided on 18.9.2006, to submit that in such a situation there was no question of misuse of any 'C' form as the petitioner was entitled to purchase such goods on the strength of registration granted under the Central Act.

In **Radio and Electricals Limited** (supra), question involved was about scope of enquiry during assessment of a selling dealer who sells goods and charges concessional rate of tax on furnishing of requisite certificate by the purchaser. It was held that selling dealer could not be denied concessional rate of tax even if purchasing dealer utilizes the goods for purposes other than those mentioned in the certificate of registration. The assessing authority was only concerned with the fact that the purchasing dealer was genuinely registered as a dealer. In **Utkal Galvanisers Limited v. Commissioner of Commercial Taxes, Orissa and others,** (1997) 104 Sales Tax Cases 222 (Orissa), the Check Post Officer detained the goods of the purchaser on the ground that the goods were wrongly categorised as machinery instead of “excavator”. The Orissa High Court held that once there was a valid bill, details of registration, there would be no difficulty for the revenue for proper levy of tax at the time of assessment and since controversial issue was involved, the matter could not be conclusively settled at the Check Post. In **JK Cotton Spinning** (supra), it was held that expression “in the manufacture of goods” will also include a process connected with the ultimate production of goods. Thus, not only raw material but all inputs in production were used in manufacture.

In **M/s. Partap Steel Rolling Mills Limited** (supra), this Court dealt with the question whether furnace oil was used in manufacture. Relying upon judgment of the Hon'ble Supreme Court, inter-alia, in **JK Cotton** (supra), it was held that furnace oil was one of the primary and necessary commodities used in the process of manufacture.

In the reply filed, the impugned order is sought to be justified mainly on the ground that since the petitioner unauthorisedly purchased goods against 'C' form at concessional rates, there was clear attempt at evasion, which could be taken cognizance of at the check post itself, notwithstanding availability of alternative forum for taking action for misuse of 'C' form under Section 10-A of the Central Act.

Learned counsel for the respondents has also raised an

objection that order of penalty being appealable, writ petition could not be entertained.

We have heard learned counsel for the parties and perused the record.

The question for consideration is whether jurisdiction to impose penalty at the check post was called for and whether bar of alternative remedy ought to be upheld.

As regards the objection as to availability of alternative remedy, the matter was gone into in the connected matter decided by this Court on 22.11.2006 being CWP No.4603 of 2005 (**Xcell Automation v. State of Punjab and others)** and after referring to the judgments of the Hon'ble Supreme Court in S**tate of UP v. Mohammad Nooh,** AIR 1958 SC 86 and **Whirlpool CorporationRegistrar of Trade Marks, Mumbai and others**, AIR 1999 SC 22, it was held that if on undisputed facts, an authority was shown to have assumed jurisdiction which it did not possess, bar of alternative remedy was not absolute. In the present case, for the reasons recorded in later part of the judgment, we are of the view that exercise of power to impose penalty at the check post was without jurisdiction. Accordingly, the preliminary objection regarding alternative remedy is overruled.

Coming to the merits, it may be observed that provisions to check and detain goods at a check post to prevent evasion of tax have already been upheld as being necessary to check evasion with a view to enforce the charging provision under the Punjab VAT Act, 2005 with reference to entry 54 of List-II of the 7th Schedule of the Constitution. We have also noticed that mere conferring of such drastic power did not mean that power could be used arbitrarily. Invocation of such powers is called for for checking evasion when a person, inter-alia, either conceals relevant information, gives misleading information or acts in any other clandestine way or where from the available information itself, attempt to evade tax is patent. The said power has to be exercised with caution and not as a substitute for ordinary assessment or penalty as separately provided for under the Act. Exercise of power may some time be overlapping and mere alternative procedure is not conclusive for not exercising the said powers, where it is clear that either there is evasion there being deficiency in

documents, inaccurate declaration having been made about description, value and contents of goods or otherwise but where there may be bonafide dispute about interpretation of law, about taxability or otherwise, summary power of imposing penalty at the check post is not intended to be exercised.

In **Xcell Automation** (supra), after referring to the judgments in **The Check Post Officer Coimbatore etc. v. M/s K.P. Abdulla and Bros., AIR 1971 SC 792 = 27 STC 1, M/s Sodhi Transport Co. and another etc. v. State of U.P. and another etc., AIR 1986 SC 1099 = 62 STC 381, Delite Carriers (Regd.) v. State of Haryana and others,** (1990) **77 STC 170 (SC), Mool Chand Chuni Lal v. Shri Manmohan Singh, Assistant Excise and Taxation Officer, Octroi Incharge, Shambhu Barrier, District Patiala and another,** (1977)40 STC 238 (P&H) and **Amrit Banaspati Company Limited v. State of Punjab and others**, (2001)122 STC 323(P&H), (on the issue of vires of provisions relating to inspection of goods in transit); ***The Cement Marketing Co. of India Ltd. v. The Asstt. Commissioner of Sales Tax, Indore and others*** **AIR 1980 Supreme Court 346, Para 5,** A**utomobile Products of India Limited v. State of Karnataka**, (1991) 81 STC 414 (Karnataka), **Orient Paper and Industries Limited and another v. State of Orissa and others,** (1995)97 STC 490 (Orissa), **Utkal Galvanisers Limited v. Commissioner of Commercial Taxes, Orissa and others,** (1997) 104 STC 222 (Orissa), S**hahnas Trading Co. and others v. State of Kerala and others,** (2002) 127 STC 1(SC), **Parry and Company Limited v. Commissioner of Sales Tax, UP Lucknow,** (2004) 138 STC 437(All.), **United Polymer Industries v. State of Punjab and others,** (2006) 146 STC 571(P&H), **Commissioner of Sales Tax and another v. P.T. Enterprises and another,** (2000) 117 STC 315 (On the issue of jurisdiction of the Check Post Officer); **State of Haryana and others v. Sant Lal and another (1993) 4 SCC 380, Tripura Goods Transport Assocation and another v. Commissioner of Taxes and others, AIR 1999 SC 719, Saral Kumar v. State of Haryana and others, (2000) 118 STC 17 (SC), State of Rajasthan and another v. D.P. Metals, AIR 2001 SC 3076, Swastic Roadways and another v. State of M.P. And others, (2004) 3 SCC 640, A.B.C. (India) Ltd. v. State of Assam and another, (2005) 6 SCC 424, M/s. Krishna Bus Service Private Limited v. The State of Haryana and others,** AIR 1985

SC 165, (provisions for records to be maintained by carrying and forwarding agents and detention of transport vehicles); **The Comptroller and Auditor General of India, Gian Prakash, New Delhi and another v. KS Jagannathan and another,** 1987 SC 537, **Lucknow Development Authority v. M.K. Gupta** AIR 1994 SC 787, **Tata Cellular v. Union of India,** AIR 1996 SC 11, ***Common Cause, A Registered Society v. Union of India,*** AIR 1999 SC 2979, **Union of India and another v. SB Vohra and others,** AIR 2004 SC 1402 Para 25, and (judicial review by High Court under Article 226), position was summed up as under:-

(1) Exercise of power at the check post, to be valid, should have reasonable nexus with the attempt at evasion.

(2) Straight-jacket approach is not called for and each instance of exercise of power has to be seen in the light of individual facts. Neither exercise of power can be restricted, wherever required for checking attempt at evasion nor can be extended to areas where there was no attempt at evasion.

(3) In an appropriate case, the writ court may examine the exercise of power and interfere if exercise of power is found to be arbitrary, malafide and without nexus with attempt at evasion.

(4) If there are disputed questions and there is reasonable nexus of exercise of power with attempt at evasion, writ petition against imposition of penalty at the check post cannot be entertained.

(5) Where relevant documents are duly produced but a bonafide plea against taxability is raised and there is neither mis-declaration nor concealment, exercise of power of imposing penalty at the check post on the ground of attempt at evasion may not be called for.

In the present case, contention raised on behalf of the petitioner was that light required for illuminating the factory was aid in manufacturing and was specifically mentioned in the registration certificate and the petitioner had raised a bonafide plea that concessional rate has been validily availed. Whatever be the merits of such a plea, the contention raised by the assessee-petitioner could not be rejected as frivolous or malafide and the petitioner having furnished all the relevant information and seriously arguable case, there could be no question of attempt at evasion. Invocation of jurisdiction to impose penalty at the check post was not called for.

Accordingly, this writ petition is allowed and impugned order dated 14.9.2005, Annexure P.8 is set aside.

(Adarsh Kumar Goel)
Judge

November 27, 2006 **(Rajesh Bindal)**
Pka/gs **Judge**